National Labor Relations Board



Miscellaneous Board Orders

Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991
May 14, 2004		W-2947
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Celtic General Contractors, Inc. and Abacus Management Corp., a Single Employer (2-CA-32313; 341 NLRB No. 116) New York, NY May 7, 2004. The Board adopted the recommendations of the administrative law judge and held that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging and laying off employees because they supported the Carpenters District Council for New York City and Vicinity; and violated Section 8(a)(1) by, among others, informing employees that they were discharged because they had communicated with the Union and caused the Union to stage a demonstration, offering employees a bonus to work late on the evening of the election, and questioning employees about their support for the Union and how they would vote in the election. [HTML] [PDF]

In adopting the judge's finding that the Respondent violated the Act by offering employee Neville Vegas a bonus to work late on the evening of the election, the Board did not rely on the judge's consideration of the Respondent's antiunion animus in establishing the violation.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Carpenters District Council for New York City and Vicinity; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York on 15 days between Dec. 11, 2000 and July 24, 2001. Adm. Law Judge Eleanor MacDonald issued her decision April 19, 2002.

Toll Mfg. Co. (9-CA-37449; 341 NLRB No. 115) Dayton, OH May 4, 2004. Chairman Battista and Member Walsh agreed with the administrative law judge's findings set forth in his supplemental decision that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Leslie Pardue on February 23, 2000. However, unlike the judge who recommended full backpay for Pardue, the majority held that Pardue is entitled to backpay from the date of his unlawful discharge on February 23, 2000 until December 12, 2000—the first day of the initial unfair labor practice hearing and the date that he first lied under oath. Dissenting, Member Schaumber would dismiss the complaint, concluding that the Respondent's reasons for discharging Pardue were valid, and not pretextual. [HTML] [PDF]

In his initial decision, the judge held that the Respondent unlawfully discharged Pardue because of his union or other concerted activities. The Respondent claimed that Pardue failed to properly clock in twice after lunch in February 2000 and violated its no-call/no-show rule by not notifying the Respondent within 2 hours of the start of his shifts on February 21 and 23, 2000, that he would not be at work. The judge credited the testimony of Pardue and his wife that they called in to Plant Manager Donley to report that Pardue was sick and would not be reporting to work. He also found that the warnings given to Pardue for the alleged lunchtime violations were not validly issued and that the no-call/no-show rule had not been enforced as strictly against other employees. As no exceptions were filed, the Board adopted the judge's decision.

During the compliance investigation, the General Counsel, faced with discrepancies in Pardue's disposition and timecards showing that Pardue had worked for Zoom Products on

February 21 and 23, 2000, requested that the record be reopened and the case remanded to the judge. The Board granted the motion, vacated its earlier order, and remanded the case to the judge to reopen the hearing and take additional testimony concerning the call-ins. In his supplemental decision, the judge found that Pardue and his wife lied at the original hearing about calling in and that their testimony at the supplemental hearing was an attempt to perpetuate the falsehood. He decided that the discrediting of the Pardues did not disturb his initial finding that the reasons offered by the Respondent for discharging Pardue were pretexts.

Member Schaumber concluded that the judge failed to engage in a proper *Wright Line* analysis of the issue presented and therefore reached the wrong result. He concluded that the judge, after having found that Pardue had lied and that Donley, whose testimony he had thoroughly discredited, had told the truth when he testified that Pardue had not called in on the days in question, should have reevaluated his credibility resolutions and only then undertaken an analysis of whether the General Counsel and Respondent met their respective *Wright Line* burdens.

The majority noted that the judge in his supplemental decision reaffirmed his initial decision, thereby incorporating his analysis of the evidence of unlawful motivation. They found that the judge correctly relied on the Respondent's failure to follow its own progressive discipline system and the Respondent's failure to notify Pardue of the timeclock warnings as further evidence of unlawful motivation. "Under these circumstances, the dissent elevates form over substance in arguing that the judge was 'obligated to begin his *Wright Line* analysis anew," the majority held.

(Chairman Battista and Members Schaumber and Walsh participated.)

Supplemental hearing at Dayton on Nov. 19, 2002. Adm. Law Judge John T. Clark issued his supplemental decision April 23, 2003.

Whiteford Ford Trucks, Inc. (25-CA-27093-1, et al.; 341 NLRB No. 117) Greenwood, IN May 6, 2004. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily refusing to hire Anthony Hudson, Forrest Hutchinson, and Gary Miller. [HTML] [PDF]

The judge held that the three applicants were qualified to meet the Respondent's requirements for the mechanic position but the Respondent's union animus toward their engaging in union and other protected activity at their former employer contributed to its refusal to hire the applicants. Member Schaumber questioned whether the Board should continue using such terms as "union animus" or "anti-union animus" and adopt in lieu thereof a term such as

"Section 7 animus" as he found the former terms are confusing. He adopted the judge's finding because the General Counsel showed that the Respondent's conduct reflected animus towards the applicants' Sec. 7 activity.

(Members Liebman, Schaumber, and Meisburg participated.)

Charges filed by Forrest Hutchinson, Gary Miller, and Anthony Hudson, Individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Indianapolis, March 20-22, 2001. Adm. Law Judge Marion C. Ladwig issued his decision Sept. 24, 2001.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Wal-Mart Stores, Inc. (Food & Commercial Workers) Las Vegas and Henderson, NV April 26, 2004. 28-CA-18255, et al.; JD(SF)-33-04, Judge Lana H. Parke.

Sutter Health Center d/b/a Sutter Roseville Medical Center (Health Care Workers Local 250, SEIU) Roseville, CA April 20, 2004. 20-CA-30496-1, JD(SF)-29-04, Judge Clifford H. Anderson.

Mammoth Mountain Ski Area (Operating Engineers Local 12) Mammoth Lakes, CA April 21, 2004. 32-CA-20513-1, 20514-1; JD(SF)-32-04, Judge James M. Kennedy.

Doane Pet Care, DPC (UFCW Local 1000) Miami, OK April 21, 2004. 17-CA-22346, 17-RC-12220; JD(SF)-28-04, Judge Thomas M. Patton.

The Durham Co. (Food & Commercial Workers Local Two) Lebanon, MO April 28, 2004. 17-CA-21947; JD(SF)-34-04, Judge Jay R. Pollack.

Boden Store Fixtures, Inc. (Carpenters Pacific Northwest Regional Council) Portland, OR April 28, 2004. 36-CA-9451-1; JD(SF)-35-04, Judge Gerald A. Wacknov.

Auto Workers Local 1420 (Ameriform Mfg., Inc.) Carrollton, KY April 30, 2004. 9-CB-10974, 11013; JD-36-04, Judge Ira Sandron.

ATC/Vancom of California (San Diego Bus Drivers Local 1309, Amalgamated Transit Union) Chula Vista, CA April 30, 2004. 21-CA-35492; JD(SF)-30-04, Judge William L. Schmidt.

Garcia Trucking Service, Inc. (Union de Tronquistas de Puerto Rico, Local 901) San Juan, PR May 5, 2004. 24-CA-9663; JD(ATL)-26-04, Judge William N. Cates.

Beacon Electric Co. (Electrical Workers [IBEW] Local 212) Cincinnati, OH May 5, 2004. 9-CA-35127; JD(ATL)-25-04, Judge Pargen Robertson.

Pro-Spec Painting, Inc. (Painters District Council Local 57 of Western Pennsylvania) Vineland, NJ May 6, 2004. 6-CA-33611, 33818; JD-40-04, Judge Earl E. Shamwell Jr.

GHSP, Inc. (Electrical Workers [IBEW] Local 275) Hart, MI May 7, 2004. 7-CA-46266; JD-42-04, Judge Michael A. Rosas.

HMY Roomstore, Inc. (an Individual) Jessup, MD May 7, 2004. 5-CA-30809; JD-38-04, Judge John T. Clark.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Twin Harbor Group Homes Association, Hoquiam, Cosmopolis and Aberdeen, WA, 19-RC-14474, May 6, 2004

DECISION AND DIRECTION OF THIRD ELECTION

Bowman Tool & Machining, Inc., Rochester, MN, 18-RC-17208, May 6, 2004

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

North East Publishing, Inc. d/b/a Lorain Journal, Lorain, OH, 8-RD-1972, May 6, 2004

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Garden Manor Farms, Inc., Bronx, NY, 2-RC-22796, May 3, 2004 Minnesota Epilepsy Group, P.A., St. Paul, MN, 18-UC-398, May 4, 2004

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ORDER RESCINDING [DECISION AND CERTIFICATION OF REPRESENTATIVE]

Silver Line Building Products Corp., Lansing, IL, 13-RC-21151, May 6, 2004
